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No. 80-1867

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

EDWARD JOHN WILLIAMS,

*Appellant,*

v.

STATE OF OHIO

*Appellee.*

**On Appeal From the Supreme Court of Ohio**

## JURISDICTIONAL STATEMENT

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## QUESTION PRESENTED BY THE APPEAL

The following question is presented by this appeal:

Under the holding of *Delaware vs. Prouse*, 440 U.S. 625, 99 S. Ct. 1391 (1979), must evidence of an alleged criminal offense be suppressed as a constitutionally impermissable search and seizure where such evidence was seized during a random motor vehicle stop made by an Ohio State Highway Patrolman when there was no articulable or reasonable suspicion that a violation of law had been committed or that the vehicle or the appellant was otherwise subject to seizure?

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I

IN THE

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OCTOBER TERM, 1980

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**NO.**

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EDWARD JOHN WILILIAMS,

*Appellant,*

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**JURISDICTIONAL STATEMENT**

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## THE OPINIONS BELOW

The Memorandum Opinion of the Court of Appeals for Paulding County, Ohio is unreported and appears herein as Appendix C.

## STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) This is a criminal prosecution against the appellant, Edward John Williams. The indictment against appellant charged that the appellant received stolen property in violation of Ohio Revised Code, Section 2913.51. Receiving stolen property is defined as receiving, retaining, or disposing of property of another, knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense. The appellant moved the trial court for an order suppressing all evidence obtained from appellant as the result of an unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States. The trial court sustained appellant's motion.

(ii) The judgment or decree sought to be reviewed is the ruling of the Supreme Court of Ohio which dismissed appellant's appeal for lack of a substantial question. Appellant had appealed the decision of the Ohio Court of Appeals for Paulding County, Ohio which had reversed the judgment of the trial court and remanded the case with instructions to overrule appellant's motion to suppress evidence. The Ohio Court of Appeals ruling was issued on October 24, 1980 and entered on that day. A Notice of Appeal was filed in the Court of Appeals of the Third Appellate Judicial District of Ohio, Paulding County, Ohio on November 28, 1980. The Supreme Court of Ohio dismissed the appeal on February 10, 1981. The Notice of Appeal was filed in the Supreme Court of Ohio on April 28, 1981.

(iii) Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257 (2).

(iv) Cases sustaining the jurisdiction of this Court are:
*Delaware v. Prouse,* 440 U.S. 625, 99 S. Ct. 1391 (1979).
*Kretchmar v. Nebraska,* 99 S. Ct. 1783 (1979).

## STATEMENT OF THE FACTS OF THE CASE

Edward John Williams, appellant herein, is a citizen of the United States and a resident of the State of Ohio. On March 8, 1979, appellant was charged with receiving stolen property in a complaint filed by Trooper Jerry P. Brown of the Ohio State Highway Patrol.

On March 13, 1979, a hearing was held in the County Court of Paulding County, Ohio, for the purpose of setting bond. At that time, bond was set at $ 25,000.00 and the appellant was ordered released upon execution of an appearance bond in the amount of $2,500.00. The appellant had a preliminary hearing on April 23, 1979, at which time he was bound over to the Court of Common Pleas of Paulding County, Ohio. Subsequently, on June 7, 1979, a Paulding County, Ohio grand jury returned an indictment against the appellant for receiving stolen property, a violation of Ohio Revised Code Section 2913.51. At his arraignment on June 21, 1979, the appellant entered a plea of not guilty. A jury trial was scheduled to begin in the Court of Common Pleas of Paulding County, Ohio on September 17, 1979, but was continued until October 23, 1979. Thereafter, on September 19, 1979, appellant, through his counsel, filed a motion to suppress all evidence obtained from the appellant as a result of the stopping and detention of appellant's vehicle.

The charge against appellant was based on an incident which occurred on March 7, 1979. On that date the appellant was operating a motor vehicle on U.S. Route 127 in Paulding County, Ohio. As the appellant proceeded northbound on Route 127, he and two other motorists were motioned to pull over by Trooper Jerry P. Brown of the Ohio State Highway Patrol. The appellant duly pulled off the highway and was informed by the officer that a motor vehicle inspection would be conducted on appellant's vehicle. The officer then asked appellant for his driver's license and automobile registration, which appellant produced. A lengthy delay ensued during

which Officer Brown made several trips to his cruiser. Finally, Trooper Brown informed appellant that he suspected the vehicle was a stolen one, read him the Miranda rights, and asked him for a statement. At this time appellant declined to make any further comments and Trooper Brown then transported him to the Paulding County Jail in Paulding, Ohio.

At a hearing held in regard to appellant's motion to suppress, testimony was elicited which showed that Trooper Brown had stopped appellant's vehicle entirely at random (transcript at pages 9 and 13) and that he observed nothing suspicious about appellant or his automobile at the time he motioned him to stop. (Transcript at page 10 and 11). On October 9, 1979, the Court of Common Pleas of Paulding County, Ohio made a finding sustaining appellant's motion to suppress. The Paulding County Prosecuting Attorney appealed this decision to the Court of Appeals for the Third Judicial District of Ohio. On October 24, 1980, the Court of Appeals rendered a decision reversing the trial court and instructing that the motion to suppress be overruled. The appellant then appealed this decision to the Ohio Supreme Court on the basis of *Delaware v. Prouse,* 440 U.S. 625, 99 S. Ct. 1391 (1979), but on February 10, 1981 that court dismissed applellant's appeal on the grounds that no substantial constitutional question existed. Appellant therefore appeals to the Supreme Court of the United States.

## THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL

This appeal squarely raises the issue as to whether a random motor vehicle stop, where there is no articulable or reasonable suspicion that a violation of law has been committed or that the vehicle or an occupant thereof is subject to seizure, is a constitutionally impermissable search

and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States.

**(i) THE COURT'S EARLIER DECISION IN *DELAWARE v. PROUSE*, 440 U.S. 625, 99 S. CT. 1391 (1979), CLEARLY INDICATES THAT ANY EVIDENCE OF AN ALLEGED CRIMINAL OFFENSE OBTAINED BY AN ILLEGAL SEARCH AND SEIZURE MUST BE SUPPRESSED.**

The case presently before the Court is directly on point with the Court's recent decision in *Delaware v. Prouse*, supra, and several past cases which logically lead to the *Prouse* finding that persons in automobiles on public highways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers and therefore evidence obtained from such stops and detentions must be suppressed in conformity with the constitutional rights of privacy and freedom from unreasonable searches and seizures guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution. In *Delaware v. Prouse*, supra, this Court affirmed the finding of the Delaware Supreme Court that a motion to suppress must be granted where evidence was obtained from a random stop of a motorist in the absence of specific articulable facts which justify the stop by indicating a reasonable suspicion that a violation of the law has occurred. *Delaware v. Prouse*, 383 A. 2d 1359, 1364 (Del. 1978). The facts of the instant case fall squarely within this Court's prohibition. Trooper Brown on direct examination in the trial court testified that he chose the vehicles he wished to inspect at random. "They don't expect us to inspect vehicles today at a certain location. Normally we do it at random where we choose." Transcript at page 13, lines 11 through 13. "We just do it at more or less our own choice, you might say." Transcrsipt at page 13, lines 16 and 17 "We just select them at random. When I get out of my car, I stop the next couple of cars coming at me..." Transcript at page 13, lines 24 and 25. Thus it is clear that the Defendant was stopped at random by the officer. The only remaining question to be answered is

whether the officer had probable cause to stop the Defendant. The majority opinion in *Prouse* concluded with the holding that "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver...are unreasonable under the Fourth Amendment." *Delaware v. Prouse,* supra, at 99 S. Ct. 1401. Trooper Brown testified that there was nothing suspicious about the Defendant or his vehicle at the time he was ordered to stop.

Q. Now was there anything suspicious about his (Defendant's) car at that time?

A. I just held up my hand and motioned for him to go over.

Q. There was nothing suspicious about the manner in which he drove the car or its appearance or anything like that? You just saw a car coming down and you motioned for that car to go over because he was more or less the next one in line to be pulled off to be inspected?

A. Yes, sir.

Q. At the time that you pulled him over, there was no suspicion of anything; is that correct?

A. Not at the time that I held my hand up and motioned for him to go over.

Transcript at page 10 and 11.

The case before the court is clearly one in which the articulable and reasonable suspicion which an officer must have in order to lawfully stop and detain a motorist was lacking. Indeed, there was no suspicion at all and therefore the stop was unreasonable under the Fourth Amendment and any evidence obtained thereby must be suppressed under the exclusionary rule.

The first paragraph of Ohio Revised Code Section 4513.02 (B) provides:

> When directed by any state highway patrolman, the operator of any motor vehicle shall stop and submit such motor vehicle to an inspection and such tests as are necessary to determine by law, or that its equipment is not in proper adjustment or repair, or in violation of the equipment provisions of Chapter 4513. of the Revised Code.

This statute is certainly not unconstitutional *per se*, although state highway patrolmen, like any other law enforcement officers, are required to meet minimum constitutional standards in the exercise of their duties. Thus, whenever a state highway patrolman stops a motor vehicle for an inspection under O.R.C. Section 4513.02 (B) under circumstances in which the officer has probable cause to believe the vehicle is unsafe or that some other violation of the law has been committed, the subsequent search and seizure would undoubtedly be constitutional. However, where the officer uses "unbridled discretion" to stop a vehicle under O.R.C. Section 4513.02 (B) without "at least articulable and reasonable suspicion" that a violation of law has occurred, then such a stop is unconstitutional under the *Delaware v. Prouse* decision.

The Court of Appeals of Paulding County, Ohio erred in stating that: "We conclude that in spite of the officer's statement that he stopped vehicles 'at random'...the intrusion, if any, of defendant's privacy was warranted in the interests of vehicular safety, and the stop was not violative of defendant's Fourth Amendment rights." Court of Appeals Memorandum Opinion, page 7. The Ohio Supreme Court also erred in failing to modify this decision. Their holdings fly in the face of the finding of this Court in *Delaware v. Prouse* and are therefore directly at odds with the law of the land. Mr. Justice White stated, in the *Prouse* majority opinion: "The State's interest in discretionary spot checks as a means of ensuring the safety of its roadways does not

outweigh the resulting intrusion on the privacy and security of the persons detained. Given the physical and psychological intrusion visited upon the occupants of a vehicle by a random stop..., the marginal contribution to roadway safety possibly resulting from a system of spot checks cannot justify subjecting every occupant of every vehicle on the roads to a seizure at the unbridled discretion of law enforcement officials." *Delaware v. Prouse*, supra at 99 S. Ct. 1393. The search and seizure of Appellant's vehicle was void *ab initio* and all evidence of alleged criminal offenses was properly suppressed by the trial court judge in the Common Pleas Court of Paulding County, Ohio. The Court of Appeals of Paulding County erred in reversing the decision and instructing the trial court to overrule appellant's motion to suppress.

The *Delaware v. Prouse* holding extends to all individuals operating or traveling in automobiles: "An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation." *Prouse* at 99 S. Ct. 1400-1401. "The marginal contribution to roadway safety possibly resulting from a system of spot checks cannot justify subjecting every occupant of every vehicle on the roads to a seizure."..., *Prouse* at 99 S. Ct. 1400.

It is helpful, in this case, to examine footnote 18 of the *Delaware v. Prouse* opinion:

> It has been urged that additional state interests are the apprehension of stolen motor vehicles and of drivers under the influence of alcohol or narcotics. The latter interest is subsumed by the interest in roadway safety, as may be the former interest to some extent. The remaining governmental interest in controlling automobile thefts is not distinguishable from the general interest in crime control. *Prouse* at 99 S. Ct. 1399.

After considering these important state interests, this court nevertheless found that random spot checks were not constitutionally permissible methods of enforcing them.

> Given the alternative mechanisms available, both those in use and those that might be adopted, we are unconvinced that the incremental contribution to highway safety of the random spot check justifies the practice under the Fourth Amendment. *Prouse* at 99 S. Ct. 1399.

This court ended by holding that "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed, or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendments." *Prouse,* supra at 99 S. Ct. 1401. The record below shows clearly that the stop was a totally random one made without any suspicion that a violation of law had occurred and was therefore an unreasonable seizure. Because the stop was constitutionally impermissible under the Fourth and Fourteenth Amendments, any evidence of alleged criminal offenses must be suppressed under the *Delaware v. Prouse* decision. The Ohio Supreme Court's decision dismissing Appellant's appeal of the Ohio Court of Appeals' decision overruling the trial court must be reversed. The trial court correctly sustained appellant's motion to suppress.

**(ii) THE ISSUE IN THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST.**

The resolution of the issue in this case will obviously affect all users of public highways. In this appeal, the court is confronted with a case directly on point to the *Delaware v. Prouse* decision. The trial court judge in the Paulding

County Common Pleas Court found that the facts of the case at bar fit the *Delaware v. Prouse* situation. On appeal by the State of Ohio, the Court of Appeals for the Third Appellate Judicial District of Ohio reversed the trial court's judgment sustaining a motion to suppress, finding first, that the random motor vehicle stop was warranted in the interests of vehicular safety and second, that Appellant had no standing to enforce his Fourth Amendment rights due to a lack of possessory interest in the subject motor vehicle.

Appellant submits that the findings of the Ohio Court of Appeals and the Ohio Supreme Court directly conflict with the finding of this court in *Delaware v. Prouse,* supra, and that it will be necessary for this court to address the issues herein in order to resolve the resulting conflict.

The search and seizure issue involved herein is clearly a substantial constitutional question. The starting point in search and seizure cases is, of course, the Fourth and Fourteenth Amendments. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Fourth Amendment, United States Constitution. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Fourteenth Amendment, Section 1, United States Constitution. In interpreting the unreasonableness of searches and seizures, this court has found that "two protections emerge from the broad constitutional proscription of official invasion. The first of these is the right to be secure from intrusion into personal privacy. The second, and intimately related protection, is self-protection: the right to resist unauthorized entry which has as its design

the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property. Thus, evidence of criminal action may not, save in very limited and closely confined situations, be seized without a judicially issued search warrant." *Frank vs. Maryland,* 359 U.S. 300, 79 S. Ct. 804 (1959).

This court made a finding at an early stage of American history that it was vested with sufficient power to "without question, revise the proceedings of the executive and legislative authorities of the states, and if they are found to be contrary to the constitution, may declare them to be of no legal validity." *Martin v. Hunter's Lessee,* 1 Wheat. 304, 4 L. Ed 97 (1816). This holding conformed to the basic principal already established "that a law repugnant to the constitution is void." *Marbury v. Madison,* 1 Cranch 137, 2 L. Ed. 60 (1803). This court specifically applied the Fourth Amendment protections to evidence secured by illegal searches and seizures in federal prosecutions. "If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." *Weeks v. United States,* 232 U.S. 383 (1914).

This court next made the logical extension that the Fourth and Fourteenth Amendments were to be applied with equal force to unreasonable searches and seizures by state officials. "Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States,

and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice." *Mapp v. Ohio,* 367 U.S. 643, 81 S. Ct. 1684 (1961).

On appeal below, the State of Ohio cited various Ohio statutes at length in support of the authority of the Ohio State Highway Patrol. It must be recognized, however, that pronouncements of this court override any non-conforming use of state law. It is axiomatic that no agency of the state, legislative, executive, or judicial; nor instrumentality of the state, and no person, officer, or agent exerting the power of the state shall violate individual rights guaranteed by the United States Constitution. *Ex Parte Virginia,* 100 U.S. 339, 25 L. Ed. 676 (1880). Moreover, the Ohio Constitution prohibits unreasonable searches and seizures by verbatim incorporation of Section One of the Fourth Amendment of the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized. Ohio Constitution, Article 1, Section 14.

In addition, the Ohio statute which sets forth the duties and powers of Ohio State Highway Patrolmen contains the following:

> Patrolmen shall have no other right or power of search and seizure except to take from any person, under arrest or about to be arrested, deadly or dangerous weapons in the possession of such person. O.R.C. Section 5503.02 (B).

Thus it is clear that Ohio law contains provisions very similar to the principles stated by this Court in *Delaware v. Prouse*, supra.

It is well established that stopping an automobile and detaining its occupants constitutes a "seizure" within the meaning of Fourth and Fourteenth Amendments, even though the purpose of the stop is limited and the resulting detention brief. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-558, 96 S. Ct. 3074, 3082-3083 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S. Ct. 2578 (1975); cf. *Terry vs. Ohio*, 392 U.S. 1, 16, 88 S. Ct. 1868, 1877 (1968). The basic reason for imposing Fourth Amendment limitations on law enforcement officials is to maintain a standard of reasonableness upon their exercise of discretion in order to safeguard the privacy and security of individuals against arbitrary invasions. *Marshall v. Barlow's Inc.*, 436 U.S. 307, 312, 98 S. Ct. 1816, 1820 (1978); see also *Beck v. Ohio*, 379 U.S. 89, 97, 85 S. Ct. 223, 228 (1964). The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interest. *United States v. Ramsey*, 431 U.S. 606, 616-619, 97 S. Ct. 1972, 1979-1980 (1977). This court is the ultimate interpreter of the United States Constitution and its decisions form the basis of the exclusionary rule whereby any evidence obtained in an illegal search and

seizure is inadmissible in either federal or state courts. *Mapp v. Ohio,* supra. The facts in the instant case must now be applied to this court's finding that "the State's interest in discretionary spot checks as a means of ensuring the safety of its roadways does not outweigh the resulting intrusion on the privacy and security of the persons detained. Given the physical and psychological intrusion visited upon the occupants of a vehicle by a random stop..., the marginal contribution to roadway safety possibly resulting from a system of spot checks cannot justify subjecting every occupant of every vehicle on the roads to a seizure at the unbridled discretion of law enforcement officials." *Delaware v. Prouse,* supra at 99 S. Ct. 1393.

This court has been especially concerned with guaranteeing that the individual's reasonable expectations of privacy are not subject to the discretion of the official in the field. *Camara v. Municipal Court,* 387 U.S. 523, 532, 87 S. Ct. 1727, 1733, (1967); *United States v. United States District Court,* 407 U.S. 297, 322-323, 92 S. Ct. 2125, 2139 (1972). In the *Prouse* decision, this Court found that the marginal contribution to roadway safety possibly resulting from spot checks cannot justify subjecting every occupant of every vehicle on the roads to a seizure - limited in magnitude compared to other intrusions but nonetheless constitutionally cognizable - at the unbridled discretion of law enforcement officials. *Delaware v. Prouse,* supra at 99 S. Ct. 1400. The court further pointed out that to insist upon neither an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion "would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches..." *Terry v. Ohio,* supra 392 U.S. at 22, 88 S. Ct. at 1880. This kind of standardless and unconstrained discretion is the evil which this court has discerned in previous cases and the court has insisted that the discretion of the official in the

field be circumscribed, at least to some extent. *Camara vs. Municipal Court,* supra, 387, U.S. at 532-533, 87 S. Ct. at 1733; *Almeida-Sanchez v. United States,* 413 U.S. 266, 270, 93 S. Ct. 2535, 2538 (1973).

The court has further found that the grave danger of abuse of discretion does not disappear simply because the automobile is subject to state regulation resulting in numerous instances of police - citizen contact. *Cady v. Dombrowski,* 413 U.S. 433, 441, 93 S. Ct. 2523, 2538 (1973). Whenever the government intrudes upon individual rights, the privacy interest suffers regardless of whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards. *Marshall v. Barlow's Inc.,* supra. Justice White's majority opinion is eloquent in expressing the concern that must be given to the individual's rights in search and seizure cases involving motorists:

> An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one's home, workplace, and lesiure activities. Many people spend more hours each day traveling in cars than walking on the streets. Undoubtedly, many find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel. Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed. As *Terry v. Ohio,* supra, recognized, people are not shorn of all Fourth Amendment protection when they step from their homes onto the public

> sidewalks. Nor are they shorn of those interests when they step from the sidewalks into their automobiles. *Delaware v. Prouse,* supra, at 1400-1401.

The rationale for extending probable cause protections to those traveling in automobiles is therefore indisputably clear.

The case at bar cannot be distinguished from *Delaware v. Prouse.* Both cases deal with the power of state police under state statutes to stop and detain motorists without probable cause for the purpose of maintaining highway safety. The State of Delaware urged that "these stops are reasonable under the Fourth Amendment because the State's interest in the practice as a means of promoting highway safety upon its roads more than outweighs the intrusion entailed." *Delaware v. Prouse,* supra at 99 S. Ct. 1398. The State of Ohio argues the identical point herein. This court has already considered this argument and agreed with the State of Delaware (and now the State of Ohio) "that the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed...Unquestionably, those provisions, properly administered, are essential elements in a highway safety program...The question remains, however, whether in the service of these important ends the discretionary spot check is a sufficiently productive mechanism to justify the intrusion upon Fourth Amendment interests which such stops entail...Given the alternative mechanisms available, both in use and those that might be adopted, we are unconvinced that the incremental contribution to highway safety of the random spot check justifies the practice under the Fourth Amendment." *Delaware v. Prouse,* supra at 99 S. Ct. 1398 and 1399. Among the alternatives available to states, Mr. Justice White

noted that some states require all vehicles to pass an annual safety inspection before they can be registered for the next year. *Delaware v. Prouse,* supra at 99 S. Ct. 1401. It is important to note in this respect that the State of Ohio does not rely solely on its highway patrolment to make safety inspections. Motor vehicle safety inspections are conducted extensively throughout Ohio by civilian employees of the Ohio State Highway Patrol who set up less threatening checkpoint stops similar to the suggestion in Mr. Justice White's majority opinion of *Delaware v. Prouse.* "We hold only that persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers." *Delaware v. Prouse,* supra at 99 S. Ct. 1401.

Although the *Delaware v. Prouse* decision is only a few years old, a number of reported cases have cited and followed the case in subsequent search and seizure decisions. *Payton v. New York,* 100 S. Ct. 1371, 1379 (1980); *Ybarra v. Illinois,* 100 S. Ct. 338, 345 (1979); *Dunway v. New York,* 99 S. Ct. 2248, 2255 (1979); *United States v. Buenaventura-Ariza,* 615 F. 2d 29, 32 (2nd Cir. 1980); United States v. Palmer, 603 F. 2d 1286, 1291 (8th Cir. 1979); *United States v. Price,* 599 F. 2d 494, 499, (2d Cir. 1979); *United States v. Taylor,* 488 F. Supp. 475, 478 (D. Ore. 1980); *Tinetti v. Wittke,* 479 F. Supp. 486, 490 (E.D. Wis. 1979), aff'd 620 F. 2d 160 (7th Cir. 1980).

In addition several courts have been confronted with fact situations similar to the one in the present case and have found themselves bound to follow *Delaware v. Prouse.* Where an FBI agent, claiming to be conducting vehicle inspections in conjunction with the California State Highway Patrol under a California state statute and, at the same time, looking for stolen motor vehicles, stopped a motorist for the sole reason that the motorist was driving a late model pick-up truck, the stop and search was illegal under the Fourth Amendment as an overly discretionary spot check and all evidence obtained therefrom was properly

suppressed. *United States v. Soto-Soto,* 598 F. 2d 545 (9th Cir. 1979). In another case, the state police officer's stop of a motorist based on a good faith belief that the motorist was lost was not a sufficient basis for Fourth Amendment purposes to outweigh the Defendant-motorist's right to personal security free from arbitrary interference by law officers. The exclusionary rule was used to exclude all evidence obtained as a direct result of the Fourth Amendment violation. *United States v. Dunbar,* 470 F. Supp. 704 (D. Conn. 1979), aff'd. 610 F. 2d 807 (2d Cir. 1979). The initial stop of a vehicle by police officers based only on the facts that the neighborhood was a high crime area and that neither occupant of the vehicle was known to the officers was illegal under *Prouse* and evidence discarded by the occupants as the result of the illegal stop was tainted fruit of the initial illegal stop, could not be used to validate the unlawful search and seizure, and was suppressed on appeal. *United States v. Beck,* 602 F. 2d 726 (5th Cir. 1979).

Finally, in the only reported state case thus far which deals with a *Prouse* fact situation, this court granted a petition for a writ of certiorari to the Supreme Court of Nebraska and vacated that court's judgment, remanding the case back to the Supreme Court of Nebraska for further consideration in light of *Delaware v. Prouse. Kretchmar v. Nebraska,* 99 S. Ct. 1783 (1979). The Supreme Court of Nebraska had erred in upholding the conviction of a motorist based on evidence seized from the motorist by an officer who made a random spot check of the motorist based only on the fact that the motorist was driving a late model car. The Supreme Court of Nebraska held that the officer's poorly founded suspicion was not sufficient to vitiate the lawfulness of the arrest and, moreover, that the officer had probable cause to arrest the motorist anyway when he discovered the evidence on the basis of which the motorist was convicted. *State v. Kretchmar,* 201 Neb. 308, 267 N.W. 2d 740 (1978). Nevertheless, this court found the *Kretchmar* case fell

squarely within its holding in *Delaware v. Prouse*, supra. Appellant submits that the instant case must also be required to fall into line with the *Delaware v. Prouse* decision.

## CONCLUSION

This appeal raises an issue of fundamental importance in regard to the Fourth and Fourteenth Amendments to the Constitution of the United States. In light of this court's recent decisions in *Delaware v. Prouse*, 440 U.S. 625, 99 S. Ct. 1391 (1979) and *Kretchmar v. Nebraska*, --U.S.--, 99 S. Ct. 1783 (1979) it seems clear that the search of the appellant's vehicle was illegal, and that the evidence discovered in that search should be suppressed.

Respectfully submitted,

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## APPENDIX A

## IN THE SUPREME COURT OF THE STATE OF OHIO

EDWARD JOHN WILLIAMS,

Appellant,

vs.

STATE OF OHIO,

Appellee.

## NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Edward John Williams, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Ohio dismissing the appellant's appeal, for the reason that no substantial constitutional question existed, in a case in which the court of Appeals for Paulding County, Ohio revised the trial court's judgment in regard to the appellant's motion to supress evidence entered in this action on February 10, 1981.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

/s/ Patrick H. Young
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## PROOF OF SERVICE

I, Patrick H. Young, Attorney for Edward John Williams, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 28th day of April, 1981, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows: on the State of Ohio, by mailing a copy in a duly addressed envelope by certified mail and to J. David Webb, Prosecuting Attorney, 705 West Wayne Street, Paulding, Ohio 45879.

It is further certified that all parties required to be served have been served.

/s/ Patrick H. Young
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## APPENDIX B

## ASSIGNMENT OF ERROR

The Court of Common Pleas of Paulding County erred in finding that a motor vehicle safety inspection made pursuant to Section 4513.02 of the Ohio Revised Code which revealed that the inspected vehicle was stolen violated the Fourth Amendment of the U.S. Constitution and suppressing all evidence arising from that inspection.

## APPENDIX C

## IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

STATE OF OHIO,
Plaintiff-Appellant

v.

EDWARD JOHN WILLIAMS,
Defendant-Appellee.

## MEMORANDUM OPINION

(CASE #11-79-12 - Decided October 24, 1980)

APPEAL: Court of Appeals for Paulding County.

MR. J. DAVID WEBB, Prosecuting Attorney, counsel for Plaintiff-Appellant.

MR. PATRICK H. YOUNG, counsel for Defendant-Appellee.

MILLER, J. This is an appeal by the prosecuting attorney of Paulding county from a judgment of the Court of Common Pleas of that county granting a motion to suppress evidence.

Defendant's vehicle was stopped by a state highway trooper in a traffic safety check. The officer observed that the vehicle identification number located inside the windshield of the car, and which was readily visible to him from outside the

car, was not in accord with those generally appearing on Ford Motor Company products. Upon further check it was discovered that the vehicle was in fact stolen.

The indictment against defendant provided that he "did, receive, retain or dispose of certain property, being a 1978 Lincoln Continental Mark V automobile, the property of another ★ ★ ★ knowingly or having reasonable cause to believe said property had been obtained through the commission of a theft offense ★ ★ ★ in violation of the Ohio Revised Code, Title 29,, Section 2913.51 ★ ★ ★ ."

Defendant moved the trial court for an order suppressing all evidence obtained from defendant as a result of an illegal stop and detention. The trial court sustained defendant's motion.

The prosecutor sets forth one assignment of error in this appeal:

> "The Court of Common Pleas of Paulding County erred in finding that a motor vehicle safety inspection made pursuant to Section 4513.02 of the Ohio Revised Code which revealed that the inspected vehicle was stolen violated the Fourth Amendment of the U.S. Constitution and suppressing all evidence arising from that inspection."

The Supreme Court in *Delaware v. Prouse,* U.S. , 99 S. Ct. 1391, the case principally relied upon by defendant, concluded that stopping an automobile and detaining its occupants constitutes a "seizure" within the meaning of the Fourth and Fourteenth Amendments. The Court held that (page 1401):

> " ★ ★ ★ except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment."

The Court stated, however (p1401):

> "This holding does not preclude the State of Delaware or other states from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning all oncoming traffic at roadblock-type stops is one possible alternative. We hold only that persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers ★ ★ ★ ."

In *U.S. v. Martinez-Fuerte,* 428 U.S. 543, 96 S. Ct. 3074, the Supreme Court held a permanent checkpoint inspection of automobiles for illegal aliens constitutional where the automobiles were slowed at the checkpoint and certain automobiles selectively referred to an area for secondary inspection for a more thorough inquiry, although having previously held roving patrol stops without warrant or probable cause for the same purpose to be unconstitutional in *Almeida-Sanchez v. U.S.,* 413 U.S. 263, 93 S. Ct. 2535.

In *Delaware v. Prouse,* supra, the court stated that (p1398) "[w]e cannot assume that the physical and psychological intrusion visited upon the occupants of a vehicle by a random stop to check documents is of any less moment than that occasioned by a stop by border agents on roving patrol."

R.C. 5503.02(A) entitled "Duties and powers of state highway patrol" provides as pertinent:

> "(A) The state highway patrol shall enforce the laws of the state relating to the titling, registration, and licensing of motor vehicles; enforce, on all roads and highways, notwithstanding section 4513.39 of the Revised Code, the laws relating to the operation and use of vehicles on the highways; enforce and prevent the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on such highways; investigate and report to the public utilities commission violations of its rules and the laws governing the transportation of persons and property by motor transportation companies and all other motor carriers for hire; investigate and report violations of all laws relating to the collection of excise taxes on motor vehicle fuels; and regulate the movement of traffic on the roads and highways of the state, notwithstanding section 4513.39 of the Revised Code."

R.C. 4513.02(B) states in part:

> "(B) When directed by any state highway patrolman, the operator of any motor vehicle

shall stop and submit such motor vehicle to an inspection and such tests as are necessary to determine whether it is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, or in violation of the equipment provisions of Chapter 4513. of the Revised Code."

The state trooper testified in part as follows: (p8ff. of transcript of hearing on motion to Suppress):

"Q. Would you please tell the Court what you were doing at the particular time immediately before Mr. Williams [defendant] was stopped?

"A. I was holding a motor vehicle inspection.

" ★ ★ ★ ."

"Q. From time to time I have observed inspection stations where they have a station or a van set up, and the patrolman - they stop vehicles going in both directions and sometimes just one direction.

Was this such a vehicle inspection?

"A. It was similar, except that people that you are referring to - we just do it at random.

"Q. You do it at random?

"A. Yes, sir.

" ★ ★ ★ ."

"Q. Would you explain to the Court how you went about selecting the cars that you stopped?

"A. Well, when I originally stopped there, I just stopped two or three vehicles that would come down the road. It makes no difference which ones, I just stop the next two or three vehicles down the road.

"Q. All right. Now, is there any particular method of selection outside of just the fact that you just happened to stop the first two or three that came along?

"A. No, there is not. Obviously, if you see a defect, such as no muffler or something like this, then I would, you know, stop that because I can see that that is a violation. And then I continue to inspect the whole vehicle.

" ★ ★ ★ ."

We conclude that in spite of the officer's statement that he stopped vehicles "at random", that he in fact only stopped at one time the number of vehicles he could reasonably check without interfering with the flow of traffic, that the officer was exercising a reasonable discretion, that the intrusions, if any, of defendant's privacy was warranted in the interests of vehicular safety, and that the stop was not violative of defendant's Fourth Amendment rights.

Having determined the stopping of the vehicle not to be violative of defendant's Fourth Amendment Rights, we then consider defendant's standing to seek suppression of the evidence under the particular circumstances of the case.

Here the unrefuted evidence was that the automobile was in fact a stolen vehicle and was being driven by defendant, defendant claiming that he was driving the car after having borrowed it from one Young whose name appeared on the vehicle registration. Such a registration, however, indicates only that the vehicle is licensed and is not sufficient to prove ownership, a certificate of title being required therefor. See R.C. 4505.04.

Thus defendant had no title to the vehicle nor did the person from whom he allegedly had borrowed the car have title.

Although it is the current view that a person driving a car with the owner's consent has standing to object to a search of the vehicle, most courts agree that an occupant of a vehicle cannot be said to have standing by virtue of his presence if he is in possession of a stolen or otherwise illegally possessed or controlled vehicle. See La Fave, Search & Seizure, Section 11.3(e). In *U.S. v. Pitts.* 588 F 2d 102 (CA5, 1979) cert. denied U.S. , 99 S. Ct. 2171, the court held that a mere possessor-driver of a stolen automobile in operation on a highway has no legitimate expectation of privacy in the VIN number observable through the windshield.

The following appears from the testimony of the trooper at p. 18 of the transcript of the hearing on defendant's motion to suppress:

"Q. How did you come to get the information from the people in the vehicle?

"A. Well, I asked whose vehicle it was. He stated that it was registered to a Mr. Young. And I asked him how to get a hold of Mr. Young. His wife just spoke up and said that he had an

unlisted phone number, and they had just borrowed the car from him.

"They were from Florida. I said, 'Well, I would like to hold you and verify that you have permission to have the vehicle. We don't know his number, and it's unlisted. We will check him and verify that you have permission to have the car.'

"And I got this information about an address on Beach Street.

"Q. William B. Young, 1147 Front Street, is that it?

"MR. WEBB: I think it is Front Street in Lebanon.

"THE WITNESS: That was on the warranty card.

"BY THE COURT: Was that on the owner's card?

"A. That was the driver's registration, 125 Beach Street, Barberton, Ohio. That's what he gave me originally.

"Q. That's when you got his license?

"A. Yes, right. Later he produced that little warranty card and said something about it was his brother's or something like that. I don't recollect exactly what he said on that."

Thus any possessory interest that defendant could claim in the vehicle was that acquired through Mr. Young who

obviously did not and could not own the vehicle, the same having been stolen, and thus could not invest defendant with any legal possessory interest.

Since defendant had nor claimed no ownership in the vehicle and his only possessory interest as claimed was that claimed through Mr. Young who could not confer on defendant a valid possessory interest in a stolen vehicle, defendant could have no legitimate expectation of privacy in the vehicle and thus no standing to seek suppression of evidence obtained as a result of the stopping of the vehicle.

We conclude that it was erroneous for the trial court to sustain defendant's motion and its judgment must be reversed.

We reverse the judgment of the trial court and remand with instructions to overruled defendant's motion to suppress evidence.

*Judgment accordingly.*

GUERNSEY, P.G. and COLE, J, concur.

## APPENDIX D

**IN THE COURT OF APPEALS**
**OF THE THIRD APPELLATE JUDICIAL DISTRICT**
**OF OHIO PAULDING COUNTY**

STATE OF OHIO,
Plaintiff-Appellant,

v.

EDWARD JOHN WILLIAMS,
Defendant-Appellee.

**CASE NO 11-79-12**

**JOURNAL ENTRY**

This matter came on to be heard on appeal on the record, briefs and oral arguments of counsel.

Upon consideration the court finds error of the Court of Common Pleas of Paulding County in sustaining defendant-appellee's motion to suppress evidence.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the trial court be reversed at defendant-appellee's costs and that this cause be, and the same hereby is, remanded to the Court of Common Pleas of Paulding County with instructions to overrule defendant-appellee's motion and for further proceedings according to law.

It is further ORDERED that the Clerk of this Court certify a copy of this journal entry of judgment as the mandate required by Appellate Rule 27 or as required by any other provision of law.

It is further ORDERED that the Clerk of this Court furnish a copy of any opinion filed concurrently with this journal entry directly to the trial judge.

Exceptions saved.

/s/ JUDGES

## APPENDIX E

**IN THE COURT OF COMMON PLEAS**
**OF PAULDING COUNTY, OHIO**

STATE OF OHIO,

Plaintiff,

vs.

EDWARD JOHN WILLIAMS,

Defendant.

**CASE NO. CR-79-523**

**JOURNAL ENTRY**

THIS CAUSE came on to be heard upon the Defendant's Motion to suppress all evidence obtained from the Defendant as a result of a safety check stop and detention of the Defendant's automobile on March 7, 1979 in Paulding County, Ohio as an unreasonable search and seizure under Amendment IV, U.S. Constitution in producing evidence indicating a violation of the law but unrelated to automobile safety, viz, the following: Defendant's operators license, the Ohio Registration for the 1978 Lincoln Continental Mark V automobile, a

Warranty identification card for said automobile and any other evidence obtained from the confiscation and inspection of the aforesaid motor vehicle on the date mentioned. The court finds the motion well taken. Consequently;

Defendant's motion to suppress is sustained.

DATED: October 12, 1979

/s/ J. Gareth Hitchcock
J. GARETH HITCHCOCK
JUDGE

APPROVED:

/s/ John David Webb
JOHN DAVID WEBB, Prosecuting Attorney

/s/ Patrick H. Young
PATRICK H. YOUNG, Attorney for Defendant

## APPENDIX F

### § 1257. STATE COURTS; APPEAL; CERTIORARI

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

## § 2913.51 RECEIVING STOLEN PROPERTY.

(A) No person shall receive, retain, or dispose of property of another, knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

## § 4513.02(B)

(B) When directed by any state highway patrolman, the operator of any motor vehicle shall stop and submit such motor vehicle to an inspection and such tests as are necessary to determine whether it is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, or in violation of the equipment provisions of Chapter 4513. of the Revised Code.

Such inspection shall be made with respect to the brakes, lights, turn signals, steering, horns and warning devices, glass, mirrors, exhaust system, windshield wipers, tires, and such other items of equipment as designated by the superintendent of the state highway patrol by rule or regulation adopted pursuant to sections 119.01 to 119.13 of the Revised Code.

Upon determining that a motor vehicle is in safe operating condition and its equipment in conformity with Chapter 4513. of the Revised Code, the inspecting officer shall issue to the operator an official inspection sticker, which shall be in such form as the superintendent prescribes except that its color shall vary from year to year.

**§ 5503.02(B), PARA. 3**

...Patrolmen shall have no other right or power of search or of seizure except to take from any person, under arrest or about to be arrested, deadly or dangerous weapons in the possession of such person...

## APPENDIX G

## CONSTITUTION OF THE UNITED STATES OF AMERICA

### *AMENDMENT IV*

*Security from Unwarrantable Search and Seizure*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## CONSTITUTION OF THE UNITED STATES OF AMERICA

### *AMENDMENT XIV*

#### SECTION I
*Citizenship Rights Not to Be Abridged by States*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## § 14 SEARCH WARRANTS AND GENERAL WARRANTS.

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized. (See Const 1802, Art VIII, § 5.)

Office-Supreme Court, U.S.
FILED
AUG 8 1981
ALEXANDER L. STEVAS,
CLERK

Case No. 80-1867

# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

EDWARD JOHN WILLIAMS,

*Appellant,*

v.

STATE OF OHIO

*Appellee.*

## ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

## MOTION TO DISMISS; OR, IN THE ALTERNATIVE, TO AFFIRM

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## MOTION TO DISMISS; OR, IN THE ALTERNATIVE, TO AFFIRM

Appellee, State of Ohio, moves the Court to dismiss this cause on the following grounds:

1. This cause is not within this Court's jurisdiction under Title 28 of the United States Code, Section 1257 (2) as alleged in Appellant's Jurisdictional Statement;

2. This cause does not present a substantial federal question;

3. The federal question sought to be reviewed was not expressly passed on by the state court.

In the alternative, Appellee moves the Court to affirm the judgment of the Court of Appeals of Paulding County, Ohio, for the reason that its determination that Appellant lacked the necessary standing to challenge the search in question is in complete conformance with this Court's decision in *Rakas v. Illinois,* 99 S. Ct. 421; and that case plainly forecloses the questions urged for reversal in the case at hand.

## ARGUMENT IN SUPPORT OF MOTION TO DISMISS

Title 28 of the United States Code, Section 1257 (2) confers jurisdiction upon this Court to review final judgments or decrees rendered by the highest court of a State:

> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

It is on this basis that Appellant claims this Court has jurisdiction. However; at page 7 of Appellant's Jurisdictional Statement, he admits "This statute is certainly not unconstitutional *per se*, . . . . "

By Appellant's own admission, this Court does not have jurisdiction of this cause on the basis of Title 28 of the United States Code, Section 1257 (2), as he alleges in his statement of the grounds on which the Jurisdiction of this Court is invoked.

Likewise, this cause does not present a substantial federal question. Appellant alleges that "this appeal squarely raises the issue as to whether a random motor vehicle stop, where there is no articulable or reasonable suspicion that a violation of law has been committed or that the vehicle or an occupant thereof is subject to seizure, is a constitutionally impermissable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States." However, the Court of Appeals of Paulding County, Ohio, did not find that this case presented a factual situation involving a "random" stop. In fact, the Court of Appeals of Paulding County, Ohio, stated: "We conclude that in spite of

the officer's statement that he stopped vehicles "at random," that he in fact only stopped at one time the number of vehicles he could reasonably check without interfering with the flow of traffic, that the officer was exercising a reasonable discretion, that the intrusions, if any, of defendant's privacy was warranted in the interests of vehicular safety, and that the stop was not violative of defendant's Fourth Amendment rights." Court of Appeals Memorandum Opinion, page 6. The case which Appellants seeks to have this Court review does not present a federal question involving a "random" stop of vehicular travel, but the systematic inspection of motor vehicles pursuant to authority granted by state statute, the constitutionality of which, Appellant does not question.

Likewise, the federal question sought to be reviewed was not expressly passed on by the state court. The Court of Appeals of Paulding County, Ohio, did not rule upon the constitutionality of a "random" stop of vehicular travel because it did not make the factual determination that the circumstances presented constituted a "random" stop.

## ARGUMENT IN SUPPORT OF MOTION TO AFFIRM

The decision of the Court of Appeals of Paulding County, Ohio, is based primarily on its determination that Appellant had no standing to seek the suppression of the evidence sought to be suppressed:

> Since defendant had nor claimed no ownership in the vehicle and his only possessory interest as claimed was that claimed through Mr. Young who could not confer on defendant a valid possessory interest in a stolen vehicle, defendant

> could have no legitimate expectation of privacy in the vehicle and thus no standing to seek suppression of evidence obtained as a result of the stopping of the vehicle. Court of Appeals Memorandum Opinion, page 8.

As was pointed out by this Court in *Rakas v. Illinois*, 99 S. Ct. 421 at 425:

> A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.

As was pointed out in *Rakas v. Illinois*, 99 S. Ct. 421 at 429:

> " . . . . , the question is whether the challenged search and seizure violated the Fourth Amendment right of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect.

The Fourth Amendment provides:

> The right of the people to be secure in *their* persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the

> place to be searched, and the persons or things to be seized. (Emphasis added)

The stolen vehicle in question cannot legitimately be considered amongst the "effects" of the Appellant which the Fourth Amendment is designed to protect.

This position is further supported by *U.S v. Pitts*, 588 F. 2d 102 (CA5, 1979) cert. denied 99 S. Ct. 2171, in which the Court of Appeals for the Fifth Circuit held that a mere possessor-driver of a stolen vehicle operated on a highway has no legitimate expectation of privacy in the VIN number observable through the windshield.

For the foregoing reasons, Appellee, State of Ohio, respectfully requests that this appeal be dismissed; or, in the alternative, that the judgement below be affirmed.

Respectfully submitted,

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*Attorney for Appellee*
705 West Wayne Street
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## PROOF OF SERVICE

I, J. David Webb, Prosecuting Attorney of Paulding County, Ohio, Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 30th day of June, 1981, I served copies of the foregoing Motion to Dismiss; or, in the Alternative, to Affirm, on Patrick H. Young, Attorney for Appellant by delivering a copy thereof to his office at 106 East Jackson Street, Paulding, Ohio.

J. DAVID WEBB
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